

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-30172

JOHN L. ADAMS,

Chapter 11

Debtor.

**MEMORANDUM DECISION**

This Chapter 11 case came before the Court for hearing on the Debtor's Objection to Claim No. 1 of American Express Centurion Bank. (Doc. 174). The Court heard evidence on April 24, 2007, and on May 24, 2007. The Debtor was represented by counsel Von G. Memory and American Express was represented by counsel James H. Greer. For the reasons set forth below, the Debtor's objection is overruled and Claim No. 1 of American Express is allowed as filed.

**I. FACTS**

This Chapter 11 case was filed on January 21, 2003. (Doc. 1). The Court confirmed the Debtor's Plan of Reorganization on April 25, 2003. (Doc. 38). On June 13, 2005, the Court entered an order providing additional time for creditors to file claims due to additional assets which came into the estate. (Doc. 123).

American Express has filed a claim for \$20,769.70, on a credit card issued to Johnny's Plant Farm and John L. Adams. (Claim No. 1). John L. Adams, the Debtor, claims that Johnny's Plant Farm is a corporation and that the indebtedness on the card is properly owed by the corporation and not by him personally. John L. Adams testified that it was his intention and his position that he is not personally liable for the debt of the corporation.

American Express offered the testimony of Paul Carey, who is the Supervisor of its Legal Department and Assistant Custodian of Records. Carey has worked for American Express for thirty-one years and has access to its records. Carey testified that there are three ways one may obtain a "Small Business Corporate Platinum Card," which gave rise to the subject indebtedness here. Application may be made by way of a paper or "hard copy" application mailed to American Express, one may apply over the telephone, or one may make application through the internet. Carey testified that applications are kept for only two years and that the application made here is no longer available. Carey could not say whether the application which gave rise the account in question here was made by mail, telephone, or the internet. Once American Express receives an application, a determination is made whether to issue a card or not. If a card is issued, a copy of the contract is mailed with the card. American Express does not require that a signed copy of the contract be returned to them. Rather, they contend that use of the card signifies assent to the contract.

A copy of the contract was offered into evidence as Exhibit 1. The contract provides, in part, as follows:

As you read this Agreement, remember the words "you" and "your" mean the person named on the enclosed Corporate Card, or where applicable, the company.

\* \* \*

You have received this Corporate Card at the request of the Company for use in connection with the Card Account. You will be called a Corporate Card member. You will be liable for charges made in conjunction with the Corporate Card issued to you. If you are the officer who authorized us to issue one or more Corporate Cards by signing the Company's application for the Card Account (the "Authorizing Officer"), you agree to be bound by the terms of this Agreement as they apply to the Company.

\* \* \*

If you agree to be bound by this Agreement, you should sign the Card as soon as you receive it. If you do not wish to be bound by this Agreement, cut the Card in half and return the pieces to us. Unless you do so, we will assume that you have accepted this agreement.

\* \* \*

The Company and the Authorizing Officer are liable to us for all Charges on the Card Account made in connection with all Corporate Cards. If you are a Corporate Card member you are liable to us for all Charges made in connection with the Card issued to you, even though we may send bills to the Company and not to you.

(American Express Ex. 1).

American Express offered copies of statements issued on the account from January 25, 2000, through the date of the petition. (American Express Ex. 3). All of the statements are issued to: "John L. Adams, Johnny's Plant Farm, P.O. Box 32, Union Springs, AL 36089-0032." From this, Carey infers that John L. Adams is the Authorizing Officer and therefore liable on the account. Having considered the evidence, the Court finds that John L. Adams was an Authorizing Officer within the meaning of the contract and that he is a party to the contract in that capacity, notwithstanding the fact that he did not sign a written contract.

Adams does not deny that the charges were made or that he is the President of the Corporation. Adams testified that he did not recall making the application and could not say whether he made the application or whether someone else on behalf of the corporation. Copies of checks issued to American Express in payment on the account were offered into evidence. (American Express Ex. 3; Debtor Ex. 4). The checks were issued by Johnny's Plant Farm, Inc., and Adams Pecan Company, Inc. It appears that all of the charges made on the account were for business expenses and that all of the payments made were made with corporate checks.

## **II. CONCLUSIONS OF LAW**

This Court has jurisdiction to hear this contested matter pursuant to 28 U.S.C. § 1334.

This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B).

The first question is whether Adams is bound by the provisions of the contract document offered into evidence by American Express. “If a contract is unambiguous on its face, there is no room for construction and it must be enforced as written.” Alexander v. Cintas Corp. (Ex parte Cintas Corp.), \_\_ So.2d \_\_, 2006 WL 3334427 (Ala. 2006) (quoting Central Reserve Life Ins. Co. v. Fox, 869 So.2d 1124, 1127 (Ala. 2003)). Pursuant to the express terms of the contract, John L. Adams is personally liable for the charges on the contract.

The second question is whether Adams’ liability is precluded by the Alabama Statute of Frauds. Alabama Code § 8-9-2(3) provides that “[e]very special promise to answer for the debt, default or miscarriage of another” must be in writing. The question then becomes whether Adams’ promise was original or collateral. See Spafford v. Crescent Credit Corp., 497 So.2d 160, 161 (Ala. Civ. App. 1986); Adventure Travel Agency v. Falkenburg, 441 So.2d 928, 930 (Ala. Civ. App. 1983). As the terms of the contract quoted above show that Adams’ promise is primary and not secondary or collateral, he has primary liability. It follows that Adams is not a surety and for this reason, the Statute of Frauds does not apply.

### **III. CONCLUSION**

John L. Adams has personal liability on the account owed to American Express pursuant to the express terms of the contract. Moreover, his liability is primary which means that he is not a guarantor. For these reasons, the objection to claim no.1 filed by American Express is **OVERRULED** and the claim is **ALLOWED AS FILED**.

Done this the 11<sup>th</sup> day of June, 2007.

/s/ William R. Sawyer  
United States Bankruptcy Judge